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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91186650
Party	Defendant Vyro Games Ltd
Correspondence Address	PHI LAN M. TINSLEY KIRKPATRICK & LOCKHART PRESTON GATES ELL STATE STREET FINANCIAL CENTER ONE LINCOLN STREET BOSTON, MA 02111  philan.tinsley@klgates.com, tmboston@klgates.com
Submission	Answer
Filer's Name	Sara E. Yevics
Filer's e-mail	sara.yevics@klgates.com
Signature	/Sara Yevics/
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

*In re* Application Serial No.: 77/155,856  
Filed: April 13, 2007  
Applicant: Vyro Games Ltd.  
Mark: **PERSONAL INPUT POD**  
Published: April 1, 2008

*In re* Application Serial No.: 77/155,858  
Filed: April 13, 2007  
Applicant: Vyro Games Ltd.  
Mark: **PERSONAL INPUT POD**  
Published: April 1, 2008

APPLE, INC.,	)	
	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91186650
	)	
VYRO GAMES LTD.,	)	
	)	
Applicant.	)	
	)	

**ANSWER TO CONSOLIDATED NOTICE OF OPPOSITION**

Applicant, Vyro Games Ltd., answers and avers to the Consolidated Notice of Opposition of the Opposer, Apple, Inc., as follows:

1. Applicant admits that Opposer is identified in the Trademark Applications and Registrations Retrieval System of the United States Patent and Trademark Office as being the owner of record of U.S. Trademark Registration No. 2,835,698, and that the registration is for “IPOD” for “portable and handheld digital electronic devices for recording, organizing, transmitting, manipulating, and reviewing audio files; computer software for use in organizing, transmitting, manipulating and review audio files on portable and handheld digital electronic

devices,” in International Class 9. Applicant admits that according to the U.S. Patent and Trademark Office records, Registration No. 2,835,698 is a live registration, and has neither been revoked nor cancelled. Applicant is without knowledge or information sufficient to form a belief as to the truth of the other allegations of Paragraph 1 of the Consolidated Notice of Opposition and therefore denies such allegations.

2. Applicant admits that Opposer is identified in the Trademark Applications and Registrations Retrieval System of the United States Patent and Trademark Office as being the owner of record of U.S. Trademark Registration No. 3,089,360, and that the registration is for “IPOD” for “portable and handheld digital electronic devices for recording, organizing, transmitting, manipulating, and reviewing text, data, and audio files; computer software for use in organizing, transmitting, manipulating and reviewing text, data, and audio files on portable and handheld digital electronic devices,” in International Class 9. Applicant admits that according to the U.S. Patent and Trademark Office records, Registration No. 3,089,360 is a subsisting registration that has neither been revoked nor cancelled. Applicant is without knowledge or information sufficient to form a belief as to the truth of the other allegations of Paragraph 2 of the Consolidated Notice of Opposition and therefore denies such allegations.

3. Applicant admits that Opposer is identified in the Trademark Applications and Registrations Retrieval System of the United States Patent and Trademark Office as being the owner of record of U.S. Trademark Registration No. 3,341,191, and that the subsisting registration is for “IPOD” for a “full line of electronic and mechanical parts and fittings for portable and handheld digital electronic devices for recording, organizing, transmitting, manipulating, and reviewing text, data, audio and video files; electronic docking stations; stands specially designed for holding portable and handheld digital electronic devices; battery chargers;

battery packs; electrical connectors, wires, cables and adaptors; wired and wireless remote controls for portable and handheld digital electronic device; headphones and earphones; stereo amplifier and speaker base stations; automobile stereo adaptors; audio recorders; radio receivers; radio transmitters; video viewers, namely video monitors for portable and handheld digital electronic devices; and computer software for portable and handheld digital electronic devices for recording, organizing, transmitting, manipulating, and reviewing text, data, audio, image, and video files; computer application software for recording and organizing calendars and schedules, to-do lists, and contact information; computer game software; and, computer software for clock and alarm clock functionality; carrying cases, all for use with portable and handheld digital electronic devices for recording, organizing, transmitting, manipulating, and reviewing text data, audio, image, and video files,” in International Class 9. Applicant admits that according to the U.S. Patent and Trademark Office records, Registration No. 3,341,191 is a live registration, and has neither been revoked nor cancelled. Applicant is without knowledge or information sufficient to form a belief as to the truth of the other allegations of Paragraph 3 of the Consolidated Notice of Opposition and therefore denies such allegations.

4. Applicant admits that Opposer is identified in the Trademark Application and Registrations Retrieval System of the United States Patent and Trademark Office as being the owner of record of U.S. Trademark Application Serial No. 78/521,796, and that the subsisting application is for “IPOD” for “retail store services and retail store services provided via communications networks featuring computers, computer software, computer peripherals and consumer electronics, and pre-recorded music, audio-visual and music-related products; product demonstrations, provided in-store and via communications networks; information and consultation in connection with all of the foregoing,” in International Class 35 and

“computerized data storage and retrieval services for digital music, photographs, and visual text works; information and consultation in connection therewith” in International Class 39.

5. Applicant admits that Opposer is identified in the Trademark Application and Registrations Retrieval System of the United States Patent and Trademark Office as being the owner of record of U.S. Trademark Application Serial No. 77/013,000, and that the application is for “IPOD & design” for

Portable and handheld digital electronic devices for recording, organizing, transmitting, receiving, manipulating, playing and reviewing text, data, image, audio and video files; computer software for use in organizing, transmitting, receiving, manipulating, playing and reviewing text, data, image, audio, and video files on portable and handheld digital electronic devices; a full line of electronic and mechanical parts and fittings for portable and handheld digital electronic devices for recording, organizing, transmitting, receiving, manipulating, playing and reviewing text, data, image, audio and video files; electronic docking stations; stands specially designed for holding portable and handheld digital electronic devices; battery chargers; battery packs; electrical connectors, wires, cables, and adaptors; wired and wireless remote controls for portable and handheld digital electronic devices; headphones and earphones; stereo amplifier and speaker base stations; automobile stereo adapters; audio recorders; radio receivers; radio transmitters; image scanners; video viewers, namely, video monitors for portable and handheld digital electronic devices; electronic memory card readers; a full line of computer software for portable and handheld digital electronic devices for recording, organizing, transmitting, receiving, manipulating, playing and reviewing text, data, audio, image, and video files; computer application software for recording and organizing calendars and schedules, to-do lists, and contact information; computer game software; computer software for clock and alarm clock functionality; carrying cases, sacks, and bags, all for use with portable and handheld digital electronic devices; a full line of holders, straps, armbands, and clips for portable and handheld digital electronics. computers, computer peripherals, hand held computers, computer terminals, personal digital assistants, electronic organizers, electronic notepads, apparatus for recording, transmission and reproduction of text, data, image, audio, and video; blank magnetic data carriers; microprocessors, memory boards, computer and video monitors, liquid crystal displays, keyboards, electrical cables, modems, printers, digital disk drives; cameras; computer software and prerecorded computer programs for personal information management, database management software, electronic mail and messaging software; paging software; database synchronization software, computer programs for accessing, browsing and searching online databases; computer software and firmware for operating system programs; data

synchronization programs; computer software application development tool programs; adapters, computer card adapters, cable and electric connectors and computer hard drives; blank random access electronic memory, read only electronic memory; solid state electronic memory; user manuals in electronically readable, machine readable or computer readable form for use with, and sold as a unit with, all the aforementioned goods; downloadable electronic publications in the nature of books, magazines, pamphlets, brochures, newsletters, journals and magazines in the fields of sporting and cultural events, computer hardware and software applications, K-12 education and university-level subjects, and a wide range of topics of general interest, in International Class 9;

Hand-held unit for playing electronic games, in International Class 28; and

Retail store services and retail store services provided via communications networks featuring computers, computer software, computer peripherals and consumer electronics, and pre-recorded music, audio-visual and music-related products; product demonstrations provided in-store and via communications networks; providing information and consultation in connection with all of the foregoing, in International Class 35.

6. Applicant admits that Opposer is identified in the Trademark Application and Registrations Retrieval System of the United States Patent and Trademark Office as being the owner of record of U.S. Trademark Application Serial No. 78/459,101, and that the application is for “POD” for “portable and handheld digital electronic devices for recording, organizing, transmitting, manipulating, and reviewing audio files, and peripherals for use therewith; computer software for use in organizing, transmitting, manipulating, and reviewing audio files on portable and handheld digital electronic devices,” in International Class 9.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7 of the Consolidated Notice of Opposition and therefore denies such allegations.

8. Applicant accepts Opposer’s reference to its collective marks identified in the Consolidated Notice of Opposition as “Opposer’s Marks” and Applicant adopts the same reference in this Answer.

9. Applicant admits that according to the U.S. Patent and Trademark Office records, the Opposer's Marks are subsisting registrations and applications. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 9 of the Consolidated Notice of Opposition and therefore denies such allegations.

10. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10 of the Consolidated Notice of Opposition and therefore denies such allegations.

11. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11 of the Consolidated Notice of Opposition and therefore denies such allegations.

12. Applicant admits that it filed its U.S. Trademark Application Serial Nos. 77/155,856 and 77/155,858 for "PERSONAL INPUT POD" on April 13, 2007. Applicant further admits that the goods identified in U.S. Trademark Application Serial Nos. 77/155,856 and 77/155,858 for "PERSONAL INPUT POD" are "equipment sold as a unit for playing video games" in International Class 28 and "computer peripherals" in International Class 9.

13. Applicant denies the allegations of Paragraph 13 of the Consolidated Notice of Opposition.

14. Applicant denies the allegations of Paragraph 14 of the Consolidated Notice of Opposition.

15. Applicant denies the allegations of Paragraph 15 of the Consolidated Notice of Opposition.

16. Applicant admits it sells "equipment sold as a unit for playing video games" but denies the remaining allegations in Paragraph 16 of the Consolidated Notice of Opposition.

17. Applicant admits that its product consists of “equipment sold as a unit for playing video games” but denies the remaining allegations in Paragraph 17 of the Consolidated Notice of Opposition.

18. Applicant denies the allegations of Paragraph 18 of the Consolidated Notice of Opposition.

19. Applicant denies the allegations of Paragraph 19 of the Consolidated Notice of Opposition.

20. Applicant denies the allegations of Paragraph 20 of the Consolidated Notice of Opposition.

21. Applicant denies the allegations of Paragraph 21 of the Consolidated Notice of Opposition.

22. Applicant denies the allegations of Paragraph 22 of the Consolidated Notice of Opposition.

23. Applicant denies the allegations of Paragraph 23 of the Consolidated Notice of Opposition.

24. Applicant denies the allegations of Paragraph 24 of the Consolidated Notice of Opposition.

25. Applicant denies the allegations of Paragraph 25 of the Consolidated Notice of Opposition.

### **AFFIRMATIVE DEFENSES**

1. Opposer is not entitled to the relief it seeks because consumers are not likely to be confused about the source, sponsorship, approval, affiliation, or association between or among Applicant’s and the Opposer’s Marks.



2. Opposer is not entitled to the relief it seeks because its claims are an unlawful attempt to extend any trademark rights it might have in order to damage Applicant.

WHEREFORE, Applicant prays that this Consolidated Opposition be dismissed and that registration of Applicant's U.S. Trademark Applications Serial Nos. 77/155,856 and 77/155,858 be allowed.

Date: February 4, 2009

Respectfully submitted,

VYRO GAMES LTD.

By its attorney,

/philan tinsley/

Phi Lan M. Tinsley

K&L Gates LLP

State Street Financial Center

One Lincoln Street

Boston, MA 02111-2950

Telephone: (617) 261-3100

Fax: (617) 261-3175

I hereby certify that on this 4th day of February, 2009, a true and correct copy of the foregoing Answer to the Consolidated Notice of Opposition is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to counsel for Opposer,

Margaret C. McHugh, Esq. and Marie C. Seibel, Esq.  
Townsend and Townsend and Crew LLP  
2 Embarcadero Center  
8<sup>th</sup> Floor  
San Francisco, CA 94111-3834

/Sara Yevics/

Sara Yevics